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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,693	04/25/2000	James D. McCarten		8544

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EXAMINER

A, PHI DIEU TRAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,693

Applicant(s)

MCCARTEN, JAMES D.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-26, 28 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-26, 28, 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 24, 26, 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (3026651).

Richter (figures 3a, 4, 11) shows a strutless building module comprising a polygonal member (figure 4, the shape at the surrounding the center connector 20) having a center, an exterior surface, an interior surface, a lower edge , a plurality of substantially flat angles sides, a plurality of faces each one of which has an outer edge intersecting one of the sides and inclined upwardly from the side so that the faces converge in a point at substantially the center of the polygonal member (located at connection 20, figure 4), each of the angles sides including means (figure 3A) such that each of the angles sides may be connected to at least one angled side of an adjacent module, a multipurpose center connector (20, inherently multipurpose as the connector has a variety of functions in the structure) disposed in the center of the polygonal member, the multipurpose connector serves as a connector, the modules forming a domical structure (figure 5) in which the modules are connected at their respective angles sides, the center connector comprising a center connecting bolt (78, figures 10-11), a center connecting washer (20, figure 10) positioned over the center connecting bolt, the bolt depending downwardly from the interior surface of the module when the module is laid flat on its lower edge, the polygonal member being a hexagon (figure 4), a disc member (figures 6-7), the disc being substantially circular and

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concentric with center connector washer, said disc having a convex side and a concave side, the convex side in approximation with the interior surface of the module, the disc member having a circumference that engages the sides of the module.

3. Claims 24, 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (3026651).

Higson (figure 1, 5, 11-12) shows a strutless building module comprising a polygonal member (figure 5) having a center, an exterior surface, an interior surface, a lower edge, a plurality of substantially flat angles sides, a plurality of faces each one of which has an outer edge intersecting one of the sides and inclined upwardly from the side so that the faces converge in a point at substantially the center of the polygonal member, each of the angles sides including means (figure 5) such that each of the angles sides may be connected to at least one angled side of an adjacent module, a multipurpose center connector (24, 26, figures 11-12, the connector has many functions in the structure and is thus multipurpose) disposed in the center of the polygonal member, the multipurpose connector serves as a connector, the modules forming a domical structure (figure 1) in which the modules are connected at their respective angles sides, a disc member (figures 80, 78), the disc being substantially circular and concentric with center connector washer, said disc having a convex side and a concave side, the convex side in approximation with the interior surface of the module, the disc member having a circumference that engages the sides of the module, the polygonal member being pentagonal (figure 5).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter (3026651).

Richter shows all the claimed limitations except for the angles sides depending downwardly from the exterior surface of the polygonal at an angle in the range of 64 to 74 degrees, each of the surfaces inclined upwardly from its outer edge to the center of the module at angle in the range of eight to eighteen degrees.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Richter to show the angles sides depending downwardly from the exterior surface of the polygonal at an angle in the range of 64 to 74 degrees, each of the surface inclined upwardly from its outer edge to the center of the module at angle in the range of eight to eighteen degrees because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art, In re Aller, 105 USPQ 233.

6. Claim 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higson (4736551).

Higson shows all the claimed limitations except for the disc member being fabricated from polarized transparent material.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Higson to show the disc member being fabricated from polarized transparent

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material because it would enable better lighting of the interior of the dome with the entry of sunlight into the dome structure.

Response to Arguments

7. Applicant's arguments filed 1/7/05 to claims 24, 26, 30-32 have been fully considered but they are not persuasive.

8. Applicant states that the device of either Richter or Higson cannot function as claimed and thus the 102 rejection is improper. Examiner respectfully disagrees. As pointed out above in the rejection, the references show all the claimed structural limitations. The references also can function as claimed. In response to applicant's argument that applicant's multi-purpose connector is for use in the construction process....polygonal member, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant also states that neither Richter nor Higson shows a connector adapted for use in construction a dome with an overhead hoist...and the like, examiner respectfully points out that the hoist, auxiliary elements, wallboard, acoustical tiles, insulation, paneling and the like, are not claimed limitations. The claimed limitation is to the connector. The connector of the references

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meet the claimed structural limitations and function as claimed. The 102 rejection is thus proper.

The argument is thus moot.

9. With respect to applicant's statement of "module having a center connector", examiner respectfully points out that the references show "module" as claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., modules is a single unit which combines with others in a set of separate parts to form a completed whole, center connectors connected to hoist....) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims are to a module only, not a completed structure with modules, and the center connector is not claimed in combination with a hoist either.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136, or 571-272-6864 only after April 07, 2005. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486, or 571-272-6867 after 3/29/05. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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4/4/05